AMERICAN RIVERS ♦ AMERICAN OCEANS CAMPAIGN ♦ CENTER FOR MARINE CONSERVATION ♦ COAST ALLIANCE ♦ DEFENDERS OF WILDLIFE ♦ EARTHJUSTICE LEGAL DEFENSE FUND ♦ ENDANGERED SPECIES COALITION ♦ ENVIRONMENTAL DEFENSE ♦ FRIENDS OF THE EARTH ♦ IZAAK WALTON LEAGUE OF AMERICA ♦ LEAGUE OF CONSERVATION VOTERS ♦ NATIONAL ENVIRONMENTAL TRUST ♦ NATIONAL PARKS CONSERVATION ASSOCIATION ♦ NATIONAL TRUST FOR HISTORIC PRESERVATION ♦ NATIONAL WILDLIFE FEDERATION ♦ NATURAL RESOURCES DEFENSE COUNCIL ♦ SCENIC AMERICA ♦ SIERRA CLUB ♦ U.S. PUBLIC INTEREST RESEARCH GROUP

Don't Make Federal Cases Out of Local Zoning Decisions: Oppose H.R. 2372.

February 15, 2000

Dear Representative:

We urge you to oppose H.R. 2372, the Citizens Access to Justice Act, a federal "takings" bill that is designed to weaken local land use, zoning and environmental laws by encouraging costly and unwarranted federal "takings" litigation against counties, towns and cities.

H.R. 2372 seeks to radically alter the system for resolving claims that zoning, smart growth and other local safeguards result in "takings" of property that require just compensation. The bill also provides that takings claimants suing the United States can bypass federal administrative procedures.

H.R. 2372 will empower big developers to use the threat of premature, costly federal court litigation as a club to coerce small communities into approving projects that will harm neighboring homeowners and the environment. The bill would undermine smart growth planning, increase the rate and extent of sprawl, curtail democratic participation in important local land use decisions, and is a direct affront to state court systems.

H.R. 2372 attempts two major changes in the law. First, it purports to eliminate the requirement that developers who claim that zoning and other local safeguards result in "takings" of property must pursue available state court remedies. Second, it attempts to allow takings claims against both localities and the United States to bypass existing administrative procedures and proceed before there is a final agency decision on what uses of the property are permissible.

Enactment of H.R. 2372 would certainly have the exact opposite result from what supporters claim; inevitably, it would result in expensive, lengthy procedural litigation that would delay decisions on whether a compensable taking has occurred. Federal courts would first have to decide whether there was a final administrative decision and whether claimants could bypass state courts. Recently reaffirmed Supreme Court holdings are clear: the Constitution requires that premature federal claims filed under the bill against localities would ultimately have to be dismissed or transferred to state court. Takings claims must await final decisions on permissible development and claimants against localities must seek compensation in state court.

Under the bill, small communities would be pressured by a wide variety of threatened and actual federal court lawsuits. For example, state courts have already rejected unjustifiable "takings" challenges to limits on landfills, corporate hog farms and adult businesses.

(over)

As with similar bills drafted by the National Association of Home Builders in the last Congress (H.R. 1534 and S. 2271), there is no need for this drastic proposal. H.R. 2372's proponents have offered no evidence that state courts are unable or unwilling to address legitimate takings claims, or that there is any general problem with local communities' good faith efforts to fairly and efficiently resolve difficult local land use issues.

We strongly urge you to oppose H.R. 2372.

Sincerely,

Jim Lyon
Legislative Director
National Wildlife Federation

Meg Maguire
President
Scenic America

Bill Snape
Vice President, Law and Litigation
Defenders of Wildlife

Debbie Sease
Legislative Director
Sierra Club

Brock Evans
Executive Director
Endangered Species Coalition

Ted Morton
Policy Director
American Oceans Campaign

Jackie Savitz
Executive Director
Coast Alliance

Anna Aurilio
Staff Scientist
U.S. Public Interest Research Group

Kathryn Higgins
Vice President for Public Policy
National Trust for Historic Preservation

Faith Weiss
Legislative Counsel
Natural Resources Defense Council

Betsy Loyless
Political Director
League of Conservation Voters

William J. Chandler
Vice President, Conservation Policy
National Parks Conservation Association

Tim Eichenberg
Program Counsel
Center for Marine Conservation

Ann Mills
Vice President for Conservation
American Rivers

Patricia Kenworthy
Legislative Director
National Environmental Trust

Courtney Cuff
Legislative Director
Friends of the Earth

Joan Mulhern
Legislative Counsel
Earthjustice Legal Defense Fund

Jim Mosher
Conservation Director
Izaak Walton League of America

Elizabeth Thompson
Legislative Director
Environmental Defense